

EXHIBIT 160

In the Matter Of:

United States vs

Google

MARK ISRAEL, PH.D.

March 14, 2024



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

United States of America,)
et al.,) Case No.
Plaintiffs,) 1:23-cv-00108-LMB-JFA
v.)
Google, LLC,) HON. LEONIE H.M. BRINKEMA
Defendant.)
_____)

* * * * *

HIGHLY CONFIDENTIAL

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VIDEOTAPED DEPOSITION OF MARK A. ISRAEL, PH.D.

Thursday, March 14, 2024; 9:41 a.m. EDT

Reported by: Cindy L. Sebo, RMR, CRR, CLR, RPR, CCR,
CSR, RSA, CA CSR 14409, NJ Certified CR 30XI0024460,
NJ Certified RT 30XR00019500, NM CSR 589, NY Realtime
Court Reporter, NY Association Certified Reporter, OR
CSR 230105, TN CSR 998, TX CSR 12778, WA CSR 23005926,
Notary Public

Job No. 2024-933018


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1	--oOo--		
2	INDEX TO EXHIBITS (Continued)		
3	MARK A. ISRAEL, PH.D.		
4	United States, et al. vs. Google, LLC		
5	Thursday, March 14, 2024		
6	--oOo--		
7	ISRAEL		
8	DEPOSITION		
9	EXHIBIT NUMBER	DESCRIPTION	PAGE
10	Exhibit 4	E-mail string, Bates stamped	
11		GOOG-AT-MDL-14368357 through	
12		GOOG-AT-MDL-14368357	309
13	Exhibit 5	Segmentation of Google's Ads	
14		Clients, Bates stamped	
15		GOOG-AT-MDL-00312340 through	
16		GOOG-AT-MDL-00312344	452
17	Exhibit 6	PowerPoint presentation, AdMeld	
18		Publisher Growth, Bates stamped	
19		GOOG-AT-MDL-03607096 through	
20		GOOG-AT-MDL-03607102	471
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1	--oOo--		
2	P R O C E E D I N G S		
3	--oOo--		
4	--oOo--		
5	Washington, D.C.		
6	Thursday, March 14, 2024; 9:41 a.m.		
7	--oOo--		
8			
9	THE VIDEOGRAPHER: We are now on		
10	the record.		
11	My name is Jonathan Perry. I am		
12	a videographer retained by Lexitas.		
13	This is a video deposition for		
14	the U.S. District Court, Eastern District		
15	of Virginia, Alexandria Division,		
16	1:23-cv-00108-LMB-JFA.		
17	The date is March 14th, 2024.		
18	The time is approximately 9:41 a.m.		
19	We are at the offices of		
20	Freshfields Bruckhaus Deringer 700 13th		
21	Street, Northwest in Washington, D.C.		
22	This is being taken in the matter		

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1	of the United States of America, et al.		
2	versus Google LLC. The name of the		
3	witness is Mark A. Israel, Ph.D.		
4	All counsel will be noted on the		
5	stenographic record.		
6	The court reporter is Cindy Sebo,		
7	also with Lexitas.		
8	And would you please swear in the		
9	witness?		
10	--oOo--		
11	MARK A. ISRAEL, PH.D.		
12	after having been first duly sworn under		
13	penalty of perjury by the certified stenographer		
14	to tell the truth, the whole truth, and nothing		
15	but the truth, was examined and testified as		
16	follows:		
17	--oOo--		
18	CERTIFIED STENOGRAPHER: Thank		
19	you very much.		
20	And the witness is sworn.		
21	ATTORNEY NAKAMURA: Thank you.		
22			

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Page			
1	--oOo--		
2	EXAMINATION BY COUNSEL FOR PLAINTIFFS		
3	--oOo--		
4	BY ATTORNEY NAKAMURA:		
5	Q. Good morning, Dr. Israel.		
6	A. Good morning.		
7	Q. My name is Brent Nakamura, and I'm		
8	a trial attorney at the U.S. Department of		
9	Justice here on behalf of the Plaintiffs.		
10	I'm joined by my colleagues at		
11	the Division, senior litigation counsel		
12	Julia Wood, economist Zachary Mozenter and		
13	paralegals Sophia Casten and Colleen Dugan.		
14	Dave Barth from Bates White is		
15	also present, and we will be later joined by		
16	trial attorney Victor Liu.		
17	Could you please state your		
18	full name for the record?		
19	A. Yes. It's Mark, M-A-R-K, A.		
20	Israel, I-S-R-A-E-L.		
21	Q. And do you understand that you're		
22	under oath today and sworn to tell the truth,		

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<p>1 its exchange take rate in that scenario?</p> <p>2 A. Again, increase at all is not</p> <p>3 relevant to my opinion. I mean, it would have</p> <p>4 been a good thing for him to provide some</p> <p>5 analysis of, if he wanted to satisfy a SSNIP. He</p> <p>6 hasn't done it.</p> <p>7 I -- my opinion is they would still</p> <p>8 face substantial competition that would greatly</p> <p>9 constrain the price. If Professor Lee wanted to</p> <p>10 argue that competition would be small enough such</p> <p>11 that they could impose a SSNIP, he should have</p> <p>12 shown that, but he didn't.</p> <p>13 Q. So you don't know whether, if using</p> <p>14 Professor Lee's market definition, all exchanges</p> <p>15 were purchased by Google, all exchange</p> <p>16 competitors in this competitive set -- you don't</p> <p>17 know whether or not it would be likely that</p> <p>18 Google would be able to increase its exchange</p> <p>19 take rate; is that correct?</p> <p>20 ATTORNEY EWALT: Objection to</p> <p>21 form.</p> <p>22 THE WITNESS: My opinion is -- I</p>	<p>1 form.</p> <p>2 THE WITNESS: Good relative to</p> <p>3 what?</p> <p>4 BY ATTORNEY NAKAMURA:</p> <p>5 Q. Whatever is in your opinion.</p> <p>6 Would it be good, as you</p> <p>7 understand the term "good," for consumers, in</p> <p>8 your opinion?</p> <p>9 ATTORNEY EWALT: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: I don't know how to</p> <p>12 answer "good" relative to some</p> <p>13 alternative.</p> <p>14 BY ATTORNEY NAKAMURA:</p> <p>15 Q. When you were looking to define a</p> <p>16 market in your expertise, as an economist, what</p> <p>17 evidence related to con -- to customers do you</p> <p>18 examine to assist you in properly defining that</p> <p>19 relevant market?</p> <p>20 ATTORNEY EWALT: Objection to</p> <p>21 form.</p> <p>22 THE WITNESS: Above and beyond</p>
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<p>1 don't -- I don't know whether there would</p> <p>2 be a zero change in price. My opinion,</p> <p>3 as I've tried to be clear, is there would</p> <p>4 still be substantial competitive</p> <p>5 pressure. I think that competitive</p> <p>6 pressure makes it unlikely there would be</p> <p>7 a SSNIP.</p> <p>8 I think, at minimum, somebody</p> <p>9 would need to show that that's enough to</p> <p>10 get to a SSNIP, and my number one opinion</p> <p>11 is that he has not done that.</p> <p>12 BY ATTORNEY NAKAMURA:</p> <p>13 Q. So returning to the example where</p> <p>14 only Google and Meta were around in the digital</p> <p>15 advertising market, as you -- as you've</p> <p>16 conceptually suggested on Page 261, would that</p> <p>17 duopoly be good for consumers --</p> <p>18 ATTORNEY EWALT: Objection to</p> <p>19 form --</p> <p>20 BY ATTORNEY NAKAMURA:</p> <p>21 Q. -- in your opinion?</p> <p>22 ATTORNEY EWALT: -- objection to</p>	<p>1 all others, substitution -- in a</p> <p>2 two-sided market, substitution from</p> <p>3 customers on both sides of the market.</p> <p>4 BY ATTORNEY NAKAMURA:</p> <p>5 Q. And how do you determine whether,</p> <p>6 if at all, you should weight substitution for one</p> <p>7 side of the market more than the other, or how do</p> <p>8 you think about the two-sidedness when thinking</p> <p>9 about substitution?</p> <p>10 ATTORNEY EWALT: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: I mean, again, this</p> <p>13 is an experiment that Professor Lee could</p> <p>14 have done but didn't. I mean, what</p> <p>15 matters is the interplay between the two</p> <p>16 sides and what -- what new equilibrium</p> <p>17 price that it leads.</p> <p>18 Now, it's complicated in a</p> <p>19 two-sided market because it's not just in</p> <p>20 a sort of simple -- simpler transactions</p> <p>21 market where there's, like, a tax</p> <p>22 imposed. Professor Lee talks about that.</p>

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<p>1 academic textbooks, journals, well-accepted</p> <p>2 concepts in the field.</p> <p>3 So I just want to make sure</p> <p>4 that you have the opportunity to tell me if there</p> <p>5 are any citations you can provide at all</p> <p>6 regarding the economic understanding of a duty to</p> <p>7 deal.</p> <p>8 A. There's lots of citations in this</p> <p>9 report in other sections, and there are more</p> <p>10 beyond that. This is an introduction that has</p> <p>11 literally no footnotes because it's introducing</p> <p>12 the rest of the report.</p> <p>13 If you want to look in the rest of</p> <p>14 the report, there's whole sections on the harms</p> <p>15 that come -- that would come from behavior like</p> <p>16 this.</p> <p>17 Q. And last question: Can you give me</p> <p>18 an example, as an economist, of any situation in</p> <p>19 which a duty to deal would not, in your opinion,</p> <p>20 be harmful to competition and consumers?</p> <p>21 ATTORNEY EWALT: Objection to</p> <p>22 form.</p>	<p>1 deposition.</p> <p>2</p> <p>3 (Witness excused.)</p> <p>4</p> <p>5 (Deposition concluded at 6:36 p.m.</p> <p>6 EDT)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
Page 495	Page 497
<p>1 THE WITNESS: I think a duty to</p> <p>2 deal -- an actual requirement to deal is</p> <p>3 harmful. I can't think of an example</p> <p>4 where the duty is not harmful.</p> <p>5 There might be situations where</p> <p>6 firms work together in some way that's</p> <p>7 beneficial, but I think requiring firms</p> <p>8 to work with their competitors is harmful</p> <p>9 to the essence of the competitive</p> <p>10 process.</p> <p>11 ATTORNEY NAKAMURA: All right.</p> <p>12 See, we're at time.</p> <p>13 Thank you very much, Dr. Israel.</p> <p>14 And we'll go off the record.</p> <p>15 ATTORNEY EWALT: Not quite. I</p> <p>16 want to designate the transcript as</p> <p>17 highly confidential under the protective</p> <p>18 order in this case.</p> <p>19 Now we can go off the record.</p> <p>20 ATTORNEY NAKAMURA: Thank you.</p> <p>21 THE VIDEOGRAPHER: Off the record</p> <p>22 at 6:36. And this ends today's</p>	<p>C E R T I F I C A T E</p> <p>1 I, Cindy L. Sebo, Nationally Certified Court</p> <p>2 Reporter herein, do hereby certify that the foregoing</p> <p>3 deposition of MARK A. ISRAEL, PH.D. was taken before</p> <p>4 me pursuant to notice at the time and place indicated;</p> <p>5 that said witness duly swore to tell the truth, the</p> <p>6 whole truth, and nothing but the truth under penalties</p> <p>7 of perjury; that said testimony of witness was</p> <p>8 correctly recorded to the best of my abilities in</p> <p>9 machine shorthand, thereafter transcribed under my</p> <p>10 supervision with computer-aided transcription; that</p> <p>11 deposition is a true and accurate record of the</p> <p>12 testimony given by the witness; that I am neither</p> <p>13 counsel, nor kin to any party in said action, nor</p> <p>14 interested in the outcome; and that a copy of this</p> <p>15 transcript obtained from a source other than the court</p> <p>16 reporting firm, including an adversary or co-counsel</p> <p>17 in the matter, is uncertified and may not be used at</p> <p>18 trial.</p> <p>19 </p> <p>20 CINDY L. SEBO, RMR, CRR, CLR, RPR, CCR, CSR,</p> <p>21 RSA, CA CSR 14409, NJ Certified CR 30XI0024460,</p> <p>22 NJ Certified RT 30XR00019500, NM CSR 589, NY</p> <p>Realtime Court Reporter, NY Association Certified</p> <p>Reporter, OR CSR 230105, TN CSR 998, TX CSR 12778,</p> <p>WA CSR 23005926, Notary Public</p>